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Error to Circuit Court, Appomattox County.

Action by Dora E. Pamplin against the Norfolk & Western Railway Company. Judgment for defendant, and plaintiff brings error. Reversed and remanded for new trial, with directions.

A. S. Hester, of Lynchburg, for plaintiff in error.

F. S. Kirkpatrick, of Lynchburg, for defendant in error.

TROTTER *v.* E. I. DU PONT DE NEMOURS & CO.

March 13, 1919.

[98 S. E. 621.]

1. Pleading (§ 252 (2)*)—Amended Declaration—Effect of Former Declaration.—Where case was tried on the second amended declaration, which was intended as a substitute for the first two declarations, the case stood as though the first two declarations had not been filed, and allegations therein with reference to how accident happened did not bind plaintiff.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 348.]

2. Appeal and Error (§ 866 (2)*)—Ruling on Demurrer to Evidence—Review.—The trial court having sustained defendant's demurrer to plaintiff's evidence, the court on appeal will only consider whether a verdict for plaintiff, if found, would be set aside as without evidence to support it.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 576; 4 Va.-W. Va. Enc. Dig. 540.]

3. Appeal and Error (§ 927 (5)*)—Ruling on Demurrer to Evidence—Review.—In determining whether demurrer to plaintiff's evidence was properly sustained, court on appeal must admit the truth of plaintiff's evidence and all inferences therefrom, favorable to the plaintiff, which the jury might have fairly drawn.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 522.]

4. Trial (§ 139 (1)*)—Demurrer to Evidence.—If verdict for plaintiff would not have been set aside as without evidence to support it, demurrer to plaintiff's evidence should have been overruled.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 536.]

5. Master and Servant (§ 286 (17)*)—Negligence—Question for Jury.—In action for injuries to plaintiff servant, due to falling of a scaffold which he was using in the course of his employment, and which had been erected by defendant master, question of defendant's negligence held for the jury.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 726.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

6. Master and Servant (§ 103 (1)*)—Nonassignable Duties.—One of the nonassignable duties of the master is to use due care to furnish his servant with a reasonably safe place in which to work, and reasonably safe tools and utensils with which to work, and if he fails to do so he is liable to the servant for injuries proximately resulting from such failure.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 669.]

7. Master and Servant (§ 276 (3)*)—Proximate Cause of Injury—Faulty Construction of Scaffold.—In action for injuries to plaintiff servant, due to falling of a scaffold which he was using in the course of his employment, and which had been erected by defendant master, held, under the evidence, that the faulty construction of the scaffold was the proximate cause of the injury.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 692.]

8. Master and Servant (§ 280*)—Faulty Construction of Scaffold—Assumption of Risk.—In action for injuries to plaintiff servant, due to falling of a scaffold which he was using in the course of his employment, and which had been erected by defendant master, held, under the evidence, that plaintiff did not assume the risk.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 693.]

9. Master and Servant (§ 217 (7)*)—Assumption of Risk—Knowledge of Danger.—Plaintiff had the right to assume, when put to work on scaffold, that it was in a reasonably safe condition, and, if defect and danger therefrom was not so plain and clear that he must necessarily have been at fault in failing to observe it, he cannot be charged with knowledge of the defect on account of its obvious character.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 694-696.]

Error to Circuit Court, Prince George County.

Action by Millard F. Trotter, Jr., against E. I. Du Pont de Nemours & Co. The trial court sustained a demurrer to plaintiff's evidence, and entered judgment for the defendant, and plaintiff brings error. Reversed.

Lassiter & Drewry, of Petersburg, for plaintiff in error.

Plummer & Bohannon, of Petersburg, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.